

NATIONAL CENTER FOR STATE COURTS

HAITI RULE OF LAW PROJECT

Quarterly Report # 1

October 1, 2005 – December 31, 2005

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**UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT**

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A. PROJECT GOALS

This report outlines the activities conducted by the National Center for State Courts (NCSC) under the Haiti Judicial Strengthening and Reform Program during the first quarter. The purpose of this two-year project is to conduct three types of activities: 1) Strengthen the administrative, management, and technical capacity of the courts and parquets through training and technical assistance to the justices of the peace, judges, prosecutors, and court personnel; 2) Reduce pretrial detention by improving the flow of cases through the police, prisons, and courts; and 3) Improve citizen links to the judiciary through greater citizen awareness of their rights and access to legal services.

B. HIGHLIGHTS OF THIS REPORTING PERIOD

- NCSC addressed the problem of excessive pretrial detention through the sponsorship of special hearings in the Port-au-Prince First Instance Court and National Penitentiary in November and December; sponsoring a commission to handle simple cases resulting in fast resolution; beginning data collection for analysis; designing a system to identify and release detainees who have spent more time awaiting trial than the maximum potential sentence for their charge; and drafting a decree that will create a judicial position to oversee the 48-hour rule and issuance of warrants by magistrates.
- Home office and local project staff designed the workplan for the coming year, with input from members of the judiciary, civil society, and the Ministry of Justice (MOJ) to create a plan that is relevant and achievable.
- NCSC provided significant assistance to the MOJ in the drafting process of key decrees that the government adopted on December 29, 2005. In these decrees, the government created a council to govern the judiciary, adopted official rules of procedures for the Justice of the Peace courts, and provided for the reorganization of the Ministry of Justice.
- Following the success of the introductory course for the Masters Degree at the Law Faculty offered under NCSC's previous task order, the Faculty launched a long term program with significant assistance from NCSC.
- A delegation of seven representatives from the justice sector traveled to the US for a study tour, visiting courts, prisons, and pretrial services agencies. The study tour attendees have identified areas where they can improve the Haitian justice system through relatively simple solutions.

C. TASK-SPECIFIC ACCOMPLISHMENTS DURING THE REPORTING PERIOD

1. Project administration

- **Workplan Designed**

Project staff from the home office as well as the local office developed a comprehensive workplan for the year, outlining project activities, a timeline, and indicators for measurement of the activities' effectiveness. During this process, the team solicited input from representatives of the MOJ, including the Minister and members of his cabinet, key civil servants, members of the judiciary, and civil society organization, such as the Port-au-Prince (PAP) Bar Association.

- **New Staff**

Since the current project has more than doubled in size, both in terms of activities and level of funding, NCSC added or identified four new staff members. Three are experienced and respected legal experts, Me Patrick-Pierre Louis (former MOJ Cabinet member under Ministers Gousse and D'Orleans), Sabine Boucher (former head of studies at the Magistrates School), Lionel Bourguoin (an experienced prosecutor); and one assistant accountant, Lourdie Belot. Belot and Louis have started work, while both Bourguoin and Boucher will join the office in the next quarter.

2. Strengthen the administrative, management, and technical capacity of the courts and parquet

- **Workshop on the “Conseil Superieur de la Magistrature”**

With the support of NCSC, the MOJ organized a workshop to present to key justice and civil society actors the latest version of the draft decree on “Conseil Superieur de la Magistrature.” It followed a similar workshop organized under the previous task order. Once again, most of the discussion centered on the composition of the Council. The objection from some members of the judiciary was that three of the eleven members would be from the Executive Branch: the President, the Prime Minister, and the Minister of Justice.

On December 29, 2005, the Government of Haiti approved the decree. The final version was a significant change from the proposed version, removing from the Council's composition all non-magistrate positions, including the Minister of Justice. It will be composed of three judges from the Supreme Court, one Supreme Court level prosecutor, one judge and one prosecutor from a Court of Appeal, one judge and a prosecutor from a First Instance Court, and one justice of the peace.

The Minister of Justice has solicited NCSC's assistance to help this body in its genesis. This assistance includes providing an employee, on a full-time basis, to oversee the establishment of the Council. NCSC has agreed to be involved in the training of Council staff, particularly on the topics of management and finance. This body, which will govern the judiciary, will be operational in its disciplinary functions upon creation, but not until October with regard to judicial administrative functions. This gap was deliberately planned to allow sufficient time for training of the council staff and members. NCSC and other donor organizations will be involved in this period, and meetings with the Minister are already scheduled for this purpose.

- **Institutional support: drafting of decrees**

During the past quarter, NCSC has provided significant assistance to the MOJ in the drafting process of three key decrees that the government has recently adopted (New Judicial Council, Reorganization of the Ministry of Justice, and Rules of Practice for Justices of the Peace). An NCSC staff member has worked full-time within the Minister's Cabinet to draft the decrees, while NCSC home office staff has provided to the Minister and his cabinet an overview of current international trends regarding institutional development. At the request of the MOJ, an analysis of the decrees was provided, and some of these recommendations are reflected in the final version of the decrees adopted.

The Minister has asked for continued NCSC support in implementing the new decree.

- **Prosecutors Association**

In early December, the newly-established Prosecutors Association approached NCSC for support in identifying and addressing the implications for prosecutors of the new decrees adopted by the GOH in December. Although funds for a grant for this organization were not allocated in the budget, NCSC agreed to provide them with technical assistance. In particular, NCSC can provide the Association with guidance and comparative materials on the measures adopted in other countries to avoid undue influence from the executive branch.

- **Rules of Practices for JP Courts**

Following the adoption of the set of 82 Rules of Practice, and their implementation in eight jurisdictions, NCSC supported the provisional Justice of the Peace (JP) Association in introducing the Rules in the remaining seven jurisdictions around the country. More than 250 JPs attended those regional meetings. In each of these jurisdictions a follow-up committee has been established to monitor the implementation of the Rules. At the regional meetings, election of a permanent committee was discussed.

As previously reported, these events mark the first time that all 182 JP courts in Haiti will be governed by a uniform set of rules designed to improve court management, finance, and various other aspects related to the administration of the courts.

On December 29, 2005, the Government of Haiti adopted the Rules, and they now have legal status and are enforceable. The Minister of Justice has solicited NCSC assistance to implement them around the country.

- **Law School**

Following the success of the introductory course for the master's degree in court management under NCSC's previous task order, the National Law Faculty has launched a long-term program with financial assistance from NCSC. The opening ceremony was held as scheduled on December 19 with representatives of the judiciary, the MOJ, USAID, international organizations, participants, and other guests. The Dean presented the program as well as a tour of the refurbished classroom.

The program will focus on administration of justice, with the objective to develop local capacity. Other topics such as court ethics will be developed. One hundred participants from around the country are taking part in this program, including judges, lawyers, and MOJ staff.

The Masters program provides the opportunity to all law graduates to have access to higher education, not only those that can afford to study abroad. Topics will be tailored to the Haitian context. This program will greatly benefit the justice system, especially the academic sector which will gain a qualified pool of new teachers, directly impacting the quality of the bachelor studies programs.

3. Reduce pretrial detention

- **Special Hearings**

Following the NCSC-sponsored prison and court hearings during the summer judicial recess, NCSC provided technical and financial assistance for continued hearings in special afternoon sessions at the first instance court in Port-au-Prince and the National Penitentiary. In particular, NCSC worked with the judges to develop a more efficient procedure for issuing decisions from the bench, rather than delaying the judgment. Judges, prosecutors, clerks, bailiffs, and legal assistants all worked together to reduce the backlog of pretrial detainee cases. Nearly 70 cases were heard during these afternoon hearings. However, that program has been considerably disrupted by the judges' strike; courts were not operational for most of December.

- **Special Commission**

In December, as the judges' strike was preventing the continuation of pretrial detention hearings, NCSC supported the MOJ in developing an alternate mechanism for addressing pretrial detainees. NCSC provided information to the special coordination committee that was established to adjudicate cases of detainees from the National Penitentiary charged with simple offenses. The Dean of the Port-au-Prince First Instance Court, the

Chief Prosecutor, and the MOJ Director of Judicial Affairs worked at the National Penitentiary to identify cases that could be disposed of rapidly. As a result of these efforts, approximately sixty inmates were released.

- **Pretrial detention diagnostic**

NCSC began its diagnostic examination of the pretrial detention problem, designed to identify bottlenecks and procedural gaps that result in prolonged pretrial detention. A specialist from the home office developed a basic map of Haiti's criminal procedures. It examines six different stages of the penal chain, from arrest to the release at the prison, and other information relevant to the case (for example, whether the defendant was assisted by counsel). Four recent graduates from the law school were hired to collect data in specific prisons, courts and parquets. Information from nearly one hundred closed cases at the National Penitentiary has been gathered so far. Although there is not yet enough data to provide a thorough analysis, preliminary findings such as the following are emerging:

- Dismissed cases: almost all of the closed cases have been dismissed at one level or another, rather than resulting in convictions, prompting a need for further investigation into the reasons for these dismissals. From discussions students had with judges, it appears that both the police and the police judiciaire (JPs and investigative magistrates) are not organized enough or do not have sufficient training and equipment to gather the evidence they need. Consequently, many cases are dismissed for lack of evidence. It also appears that in many cases victims are afraid of testifying or even talking to the police and police judiciaire. When they do so, they are often subjected to threats as well as real attacks. No form of victim protection programs exists, but low-cost methods of protecting those individuals will be an important topic for future exploration.

- "Association de Malfaiteur:" In addition to the extraordinary percent of closed cases ended by dismissal, there is a large percentage of persons detained on charges of association de malfaiteur. It raises the question of whether an individual is kept in jail in spite of a lack of evidence; generally these individuals are caught in a major police operation where the police have arrested several persons at the same place and time.

-Deportees: Persons deported from other countries following a conviction and sentence in that country are incarcerated upon their return to Haiti, and none have been released from detention by the same authority. There are no charges against these persons and no common procedures for these types of inmates.

-Speedy cases: In some cases, the accused is brought quickly and frequently to judicial authorities. This also warrants further investigation, to determine why some cases are treated differently than others.

Once the data is fully collected and compiled in a spreadsheet format, it will be analyzed, and a pre-symposium workshop will be organized with key actors from across the system. The feedback, questions raised, and suggestions will be useful in preparing for a

larger symposium. With clear data from the system on hand, participants will be able to identify problems and find solutions. NCSC will facilitate this identification process and the implementation of these solutions.

- **Awaiting trial beyond the maximum potential sentence**

NCSC is designing a way to identify cases where individuals have spent more time in prison than the maximum sentence for which they could be convicted based on the charges that they face. The Minister of Justice has agreed to the release of these individuals.

A list of all possible offenses with their corresponding minimum and maximum sentence is being developed. Once entered in the UNDP/DAP computerized system, it will be relatively easy to ascertain which detainees have been in jail longer than the possible maximum sentence. However, this initiative is complicated by the fact that the UNDP/DAP system does not recognize that any detainee was held before February 2004, when all inmates were released at the time of former President Aristide's exodus from the country.

- **Drafting of Decree and workshops on “Juge des Libertes”**

In order to both reduce pretrial detention and establish clear procedures under the Constitutional “garde a vue delay” of 48 hours, and habeas corpus law, the MOJ decided to prepare a decree to establish a “Juge des libertes.” At the request of the Minister of Justice, a NCSC consultant has been tasked to draft the decree in conjunction with the representative from the French cooperation.

With the support of NCSC, a workshop was organized for members of the judiciary and civil society to provide their comments and suggestions regarding the legislation on “Juge des Libertes.” More than 40 participants took part in that event, including four former Ministers of Justice, and there was much debate surrounding the relevance of such legislation. According to some, this legislation is not necessary, as a strict application of the current laws would ensure that each actor in the penal chain played its role and thus eliminate unnecessary delay.

All agree, though, that rules regarding the 48 hours “Garde a vue” guaranteed in the Constitution should be clarified. On that premise, a committee was established that included, among others, high-profile jurists and former justice ministers to review the documents. Comments and suggestions of the committee have been taken into considerations by the MOJ who will shortly present the document to the Government for adoption.

- **Study Tour**

From November 26 to December 7 a delegation from justice sector institutions in Haiti traveled to the US for a study tour. The delegation was composed of the MOJ Director of

Judicial Affairs, the Dean of PAP First Instance Court, a Prosecutor, an Investigative Magistrate, the Director of Training at the Magistrate's School, and the Chief Clerk from the Supreme Court. They attended presentations from NCSC's Institute for Court Management on court and case management. To tie the theory to practice, they visited courts, prisons, and pretrial services agencies in Williamsburg, VA and Washington DC. The tour received good media coverage in Haiti. The participants have now identified several possible areas where they could improve the Haitian justice system by establishing relatively simple solutions, particularly in the area of pretrial detention.

Upon their return, the participants met for a brainstorming session to identify areas where application of the US experience could be useful. They have identified the following:

a. *Formalization and Expansion of Plea Bargaining*: This practice exists in an informal way in Haiti. Prosecutors sometimes conduct conciliation between parties, often settled by payment of money to the victim. This practice is not regulated, leading to confusion, lack of a criminal record, and a decision that is not approved by a judge. The solution is to establish a protocol that would include, among other things, a list of offenses that can be subject to plea procedures, guidance on conducting plea negotiations, and formal recognition by the court. Formalizing this practice will lead to its widespread use, speeding up resolution of pending cases and reducing pretrial detention.

b. *Presence of judges/prosecutors in police stations to oversee legality of detention and bail*: The new decree on "Juge des detention" may fulfill the objectives of this proposed measure: better control of the 48-hour rule and oversight of the warrants issued by JPs. The study tour participants were not familiar with the decree and will further discuss it in the next meeting.

c. *Improve Case Management*: Classification of cases by type of crime and distribution of cases to judges according to caseload has already been tested by the Dean of PAP and the Director of Judicial Affairs with success. They want to further develop those techniques and expand their application to all jurisdictions.

d. *Structure of Clerk Offices*: Simple and inexpensive measures can be adopted to improve order and efficiency in clerk offices, for example color coding files by case type.

e. *Explore all avenues for the use of conditional pretrial release*: Establishment of a committee to study the legal and social feasibility of conditional release programs, such as a bail, is merited; currently a tiny fraction of individuals benefit from this practice. Such activity can be incorporated in a pilot pretrial services program.

f. Improve relationships between police and the judiciary: Participants were impressed by the level and quality of collaboration between the police and the judiciary during the site visits. They want to find ways of improving the collaboration, for example through cross-training.

Participants agreed to meet next quarter to further develop these ideas.

4. *Citizen access to justice*

- **Judicial Fee Scale**

Under the previous IQC task order, NCSC completed a review of the judicial fee scale for all jurisdictions (JPs to Supreme Court), presented the document to the heads of jurisdictions for comment, and submitted a final draft to the MOJ.

The MOJ requested a final extensive consultation with key actors including clerks, bailiffs, and JPs. NCSC organized that meeting with the consultant who drafted the Rules. The set of Rules was then presented to the government to be adopted. However, some members of the cabinet thought some of the fees were too high and asked for revision and further review before adoption. The draft decree will be reviewed and resubmitted to the Government; once accepted, the fees will have legal status and can be enforced. NCSC, the MOJ, and other key partners will be involved in the implementation process.

D. DONOR COORDINATION

Since the current Minister of Justice has not been organizing meetings under the prevailing international plan, the CCI, an informal coordination group was established, including NGOs and international donors involved in the rule of law sector. To date, participants have had the opportunity to share their respective program goals and activities. Efforts will be focused on helping the MOJ implement the new decrees, using an integrated approach encompassing all donors.

E. DIFFICULTIES ENCOUNTERED AND ACTIONS TAKEN TO RESOLVE THEM

1. Social instability

For the first time since the beginning of NCSC activities in Haiti, the deteriorating security situation has seriously hampered implementation of activities. The increased number of kidnappings including family members of staff, a resurgence of assassinations, and the social turmoil resulting from the uncertainty about the election dates have all contributed to the further destabilization of society, making it difficult to carry out activities of daily life and business.

Adding to this, the judiciary has been on strike since a December decision of the government to fire five Supreme Court judges over allegations of corruption. Numerous planned and proposed meetings were postponed or cancelled due to the lack of operation of the judiciary and out of concern for safety.

NCSC contracted with an international security agency to conduct an assessment of its physical facilities. The specialist evaluated the office and the COP residence, noting areas of vulnerability and recommending measures to compensate for those areas; the recommendations are currently being implemented. The specialist also devised emergency procedures for staff and an evacuation plan.

2. Lack of human resources

The new positions allocated in this task order have been difficult to fill, because of the low human resource capacity within the country. Qualified candidates initially identified were already working for other organizations, had left the country because of the security situation, or are filling important roles in government institutions. It has taken months to locate candidates, who will complement the project, but one has just joined the team and two others will start next quarter.